

**NEW JERSEY HISPANIC BAR ASSOCIATION**

**FOURTH ANNUAL SUN, SURF & SEMINARS**

*Intercontinental Hotel, Isla Verde, P.R.*

*Friday, April 22, 2005*



**PUERTO RICO CIVIL LAW:  
HOW IT IMPACTS YOUR NEW JERSEY PRACTICE**

**PROBATE, REAL ESTATE AND FAMILY LAW**

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**PUERTO RICO CIVIL LAW:  
HOW IT IMPACTS YOUR NEW JERSEY PRACTICE**

**PART II  
PROBATE, REAL ESTATE AND FAMILY LAW**

Panel

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**Education:**           **University of Puerto Rico,**  
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                            **Juris Doctor, 1995**

**Bar Admissions:**   **Puerto Rico**

**Practice Areas:**    **Real Estate, Financial Institutions, Legislative and Regulatory**  
                            **Affairs, Commercial Lending, Telecommunications,**  
                            **Corporate Law**

Alfredo Alvarez-Ibáñez is a partner in the Corporate Department and has been with the firm since 1996.

Mr. Alvarez' practice is concentrated in various areas of commercial law, including commercial lending, secured transactions, asset-based finance and real estate, representing local and state-side lenders and borrowers. Recently, in the real estate and commercial lending areas, Mr. Alvarez represented the buyer in the acquisition and financing of two portfolios of shopping centers in Puerto Rico with an aggregate purchase price of over half a billion dollars. Mr. Alvarez' practice also involves counseling financial institutions in licensing and regulatory matters applicable to finance companies and leasing institutions. Mr. Alvarez has participated in the drafting of legislation fostering real estate development and tourism, including the Tourism Improvements District Act and the Puerto Rico Convention Center Authority Act. Mr. Alvarez has also assisted clients in the telecommunications area, including matters such as telecommunications easements and access by telecommunications companies to public rights of way.



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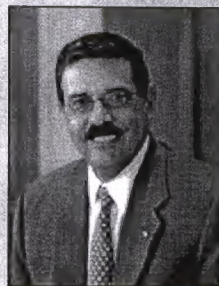
### Antonio Escudero-Viera

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Antonio Escudero-Viera is a partner in the Corporate Department of McConnell Valdés; chairs the firm's Environmental and Land Use Law Practice Group; and member of Real Estate, Trust and Estates, Intellectual Property and Internet Practice Groups. For twelve years Mr. Escudero-Viera served as the Firm's Managing Partner.



#### Practice Areas

Mr. Escudero assists clients in structuring commercial transactions, purchase and sale of businesses, as well as corporate reorganizations, and counsels clients on real estate matters. He also provides general advice and compliance counseling with Puerto Rico and United States environmental laws and regulations at the Environmental Protection Agency, the Puerto Rico Environmental Quality Board, the Department of Natural and Environmental Resources, the Puerto Rico Aqueducts and Sewers Authority, and the Puerto Rico Electric Power Authority. He counsels clients on estate planning matters, creation of trusts and wills.

#### Education

He obtained a Bachelor of Science of Economics from the University of Pennsylvania (Wharton) and a juris doctor from the University of Puerto Rico School of Law.

#### Admissions

Mr. Escudero is admitted to practice in the Commonwealth of Puerto Rico, the United States Court of Appeals for the First Circuit, the District of Columbia, the State of New York and the State of Florida.

#### Memberships

Mr. Escudero is member of the Puerto Rico Manufacturers Association Environmental Committee, the Puerto Rico Chapter of the International Water Federation, the "Academia Puertorriqueña de Legislación y Jurisprudencia", the American Bar Association and The American Law Institute.

#### Representative Matters

Mr. Escudero has successfully represented IPR Pharmaceuticals, Inc., a part of AstraZeneca, E.I. Dupont de Nemours and Wyeth, among others, in greenfield site location approvals, as well as in ongoing regulatory and environmental matters.

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# María T. Szendrey-Ramos

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## Shareholder

**María Teresa Szendrey Ramos** is a member of the corporate division at Fiddler González & Rodríguez, P.S.C. Ms. Szendrey's main areas of practice are intellectual property and general corporate matters. Ms. Szendrey also has experience in professional responsibility trusts, wills and estates.

After obtaining her Juris Doctor, Ms. Szendrey served as law clerk for the Honorable Federico Hernández Denton, Associate Justice of the Supreme Court of Puerto Rico.

Ms. Szendrey has offered various seminars on Copyrights and Trademarks for business concerns in Puerto Rico.

### Bar Professional & Civic Affiliations:

Puerto Rico Bar Association

### Court Admissions:

Commonwealth of Puerto Rico, U.S. Court of Appeals for the First Circuit

### Practice Areas:

Intellectual Property, Corporate Matters

### Education:

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**Areas of Practice:**

Commercial Litigation  
Professional Liability & Malpractice  
Construction  
International Law  
Alternative Dispute Resolution

**Bar Admissions:**

New Jersey  
U.S. District Court, District of  
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**Education:**

University of Pennsylvania, J.D.,  
1988  
Columbia College, B.A., 1983

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International Court of Arbitration,  
International Chamber of  
Commerce, Paris, France,  
Arbitrator  
Hispanic Bar Foundation of New  
Jersey, President, 1997-2000  
Hispanic Bar Association of New  
Jersey, President, 1991-1992  
Hispanic National Bar Convention,  
Chairman, 1992  
Hispanic National Bar Association,  
General Counsel, 1992-1994  
Lawyers Advisory Committee to the  
Federal Courts, 1996-1999  
Board Member, American Red  
Cross, Princeton-Trenton  
Chapter, 1994-1997  
Member, Board of Editors,  
New Jersey Lawyer, 1997-1999  
Member, Merit Selection Panel for  
Selection of U.S. Magistrates  
Member, Local Rules Revision  
Committee, U.S. District Court,  
NJ, 1996

**Daniel R. Guadalupe**

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Daniel R. Guadalupe, a member of the firm, regularly represents individual and corporate clients in a variety of commercial litigation matters including professional liability defense, construction litigation, international matters, and Uniform Commercial Code matters.

Dan has successfully defended attorneys and engineers in professional liability claims. He is in the approved attorney panel for professional malpractice matters for Lloyd's of London Underwriters.

Additionally, Dan has been involved in many construction litigation matters. He has represented property owners and tenants, contractors and subcontractors, building material suppliers, distributors and manufacturers involved in a myriad of construction disputes including construction injury claims, warranty actions, building supply defects, professional liability, and contracts and bids. Dan has given numerous presentations on these issues. Dan also represents a major real estate developer of residential homes in New Jersey and Pennsylvania.

Dan has also handled and supervised litigation and transactional matters in Switzerland, Spain, Mexico, El Salvador, Colombia, Peru, Bolivia, Paraguay, Costa Rica and Puerto Rico. Dan has provided advice to Swiss and Finnish medical equipment companies, a telecommunications carrier in El Salvador, a French power generation company and other international companies. Dan has served as an arbitrator for the International Chamber of Commerce (ICC) in disputes involving multinational companies. He has also served as an Adjunct Professor of Law at Seton Hall University School of Law.

## **The Impact of Puerto Rico Civil Law on Your New Jersey Practice**

by Daniel R. Guadalupe, Esq.

As Hispanic lawyers, it is natural that individual and commercial clients with business or personal interests in multiple jurisdictions, such as the U.S. and Latin America, would look to us for advice and representation in matters involving these jurisdictions. They assume, sometimes correctly, that because of cultural and language reasons, we are familiar with Latin American legal systems and can be helpful in such matters. However, the truth is that, unless you have been trained as a lawyer in a Latin American country, practiced or handled many legal affairs there, the legal systems inherited by the former Spanish colonies are so different and complex in comparison to our Anglo-Saxon common law jurisprudence, that the retention of local counsel becomes critical if we want to protect and advance the best interests of the client. Puerto Rico is a prime example—a unique legal world, even compared to that of its Latin American cousins, combining the Spanish legal system with the American common law tradition.

### **Historical Background**

Puerto Rico, “discovered” by Christopher Columbus in 1493, has existed as a legal jurisdiction since 1511—278 years before the U.S. Constitution was adopted. For nearly four centuries, Puerto Rico’s legal system was governed by codified law imposed by the Spanish Crown and by its Crown-appointed powerful governors.

Spain slowly moved in the late 18<sup>th</sup> century towards a unified system of laws for its provinces, (and presumably for its colonies overseas), adopting a Civil Code, a Commercial Code and a Criminal Code to govern its legal affairs. The legal system in Puerto Rico during the 18<sup>th</sup> and 19<sup>th</sup> centuries remained under the sole rule of the governor. There was no independent judiciary to speak of. Although the Cadiz Constitution of 1812 limited the Spanish King’s administration of the courts and the appointment of judges, that limitation was ignored by the island’s governors, who exercised unfettered control over the judiciary.

In 1832, the Spanish King established a “High Territorial Court” for Puerto Rico, headed by the governor. That court became an appellate court for civil and criminal cases, while “Intermediate Courts” (with 5 year term judges appointed by the King) were the trial courts.

In 1855, a Royal Decree reformed the judiciary by vesting the judicial power in the Intermediate Court, the High Territorial Court and the Supreme Court of Spain. In 1861, the governor and his appointed magistrates were prohibited from participating in the High Territorial Court, and a more independent judiciary followed. The Spanish Constitution of 1869 applied the same legal codes throughout the



Kingdom, including its colonies. The Spanish Constitution of 1873 considered Puerto Rico one of 16 states which constituted the Spanish Federation of States, further reaffirming Puerto Rico's integration into what became a uniform system of laws.

For example, the same codes which governed legal affairs in Spain were extended to Puerto Rico: the Civil Code was extended to Puerto Rico in 1889; the Commercial Code in 1886; the Penal Code in 1876; the Code of Civil Procedure in 1885; the Law of Criminal Procedure in 1888; and the Mortgage Law in 1880. Different from the common law tradition, where judges make new law, the "civil law" system which unfolded in Puerto Rico relied primarily on judicial enforcement and interpretation of legal codes which section by section, subsection by subsection, covered every minute aspect of the personal and commercial lives of the island's citizens.

By the end of the 19<sup>th</sup> century, prior to the American invasion of Puerto Rico in 1898, Puerto Rico's legal system consisted of these codes, enforced and interpreted by a Higher Territorial Court, two lower criminal courts and an Administrative Court. The intermediate courts were converted into trial courts, and municipal courts were created below them.

Anyone who has taken the Puerto Rico bar exam will tell you that, next to California's bar exam (which also relies heavily on Spanish codes), memorizing the provisions of all of these codes, makes Puerto Rico's bar exam one of the most difficult in the nation. The different codes, some of which in some measure still survive today, represented the heart of the Puerto Rican legal system—governing all aspects of life in Puerto Rico, from owning a farm to specific ways that property could be inherited by widows and heirs.

The Spanish-American War of 1898 marked the end of the Spanish empire and the beginning of legal reform in Puerto Rico. Cuba, the Philippines and Puerto Rico were all ceded to the United States under the peace treaty executed by the U.S. and Spain.

Immediately upon the institution of military rule by the U.S. in Puerto Rico, the existing legal and judicial institutions mentioned above were changed and restructured. The Military Governor was vested with absolute executive, legislative and judicial powers, but perhaps to maintain stability in the growing commerce with the island, the legal codes were all left intact.

In 1899, the U.S. established the Provisional Court for the Department of Puerto Rico. Many consider it to be the first federal court of Puerto Rico. The High Criminal Court was abolished as well as the trial courts. New municipal and district courts and an appellate Supreme Court were created, mirroring the composition of the judiciary in other states.

The following year, Congress passed the Foraker Act of 1900 which ended military rule in Puerto Rico and established a new political and legal regime for the island. The governor and his cabinet would be appointed by the President, and a Legislative Assembly elected by Puerto Ricans but with participation by the governor's cabinet (called the "Executive Council") would enact legislation. Puerto Ricans could also elect a "Resident Commissioner" (representative) to the Congress who had no vote.

The Foraker Act kept the judicial system instituted in 1899 intact, except for the creation of a U.S. Court for the District of Puerto Rico with appellate recourse to the First Circuit Court of Appeals in Boston. Such structure remains the same today. Federal statutory laws were also made applicable to Puerto Rico with the same force and effect as they apply to the other states of the Union, except for internal revenue laws. Federal laws, whether statutory or common law, now became part of Puerto Rican law, together with Puerto Rico's civil and criminal codes. This drastic and unique merger of civil law and common law only took place in Puerto Rico, and to this day is considered a fascinating (and successful) experiment by many legal scholars.

The President then appointed a commission headed by two Americans and one Puerto Rican to revise the Spanish codes to conform to a republican system of government. Interestingly, as a result of the work of this commission, the Puerto Rican Legislative Assembly revised the legal codes by replacing the Penal Code with the California Penal Code; the Criminal Procedure Code with that of Idaho; and the Civil Code with some provisions from the Louisiana Civil Code. A new Penal Code was later enacted in 1974, and local criminal procedure, evidence and civil procedure rules, as well as many local statutes (environment, labor, administrative, insurance, banking, consumer, commercial and workmen's compensation) were enacted to mirror American laws.

The Organic Act of 1917 extended American citizenship to Puerto Ricans, as well as the rights and immunities of the U.S. Constitution, including the Bill of Rights. A Senate was created to be elected by popular vote, and writs of error and appeals from final judgments issued by the Puerto Rico Supreme Court could now be taken to the First Circuit and the U.S. Supreme Court.

After World War II, Puerto Rico's significant contribution to the war effort with soldiers and other resources was recognized by enactment in 1947 of amendments to the Organic Act of 1917, which allowed the election of the island's governor by Puerto Ricans.

In 1952, Puerto Ricans adopted their own constitution, modeled after the U.S. Constitution. That year, Puerto Rico became a “Free Associated State” commonly called a “Commonwealth.” The new constitution established a governor, a bicameral Legislature (with a House and a Senate) and an independent judiciary. Federal laws apply to Puerto Rico, except for most internal revenue laws, and federal law governs areas such as the environment, civil rights, military affairs, trade, foreign affairs, immigration, and other areas. Except for these areas, Puerto Rico has autonomy to govern its own affairs, sometimes with more latitude than that of states.

The Judiciary Act of 1994 made the judicial system more similar to that of other states with a Supreme Court at the top, an intermediate appellate court, a trial court, and municipal courts.

Besides political and historical factors, commentators attribute the significant influence of American common law on Puerto Rico’s legal system to the fact that many American lawyers came to practice in Puerto Rico after 1903, when the University of Puerto Rico law school was founded. Also, Puerto Ricans began studying law in the United States in great numbers, whether to obtain Juris Doctor degrees or post-graduate degrees, and then returned to the island with common law backgrounds and influence. As the political and economic relationship between Puerto Rico and the United States has strengthened and become closer, the business of major mainland-based corporations has also influenced greatly the trend towards Americanization of Puerto Rico’s legal system.

This blend of 400 years of Spanish law with a century of American, Anglo-Saxon common law, has resulted in unique situations and potential quandaries for the unwary practitioner with clients in both jurisdictions.



## Today: Probate, Real Estate and Family Law

Probate, real estate and family law are the “bread and butter” areas of practice for private practitioners, and with the increased movement of Puerto Ricans, back and forth, from the mainland to the island and *vice versa*, many Puerto Ricans have personal and business interests in both jurisdictions. Now more than ever before, the New Jersey practitioner must be aware of the basic law, rights and remedies of his/her clients who have these personal and/or business interests in Puerto Rico.

The goal of this seminar is simply to acquaint you (as each of these areas is too lengthy and complex for a comprehensive analysis in this seminar) with the major issues you will encounter, which in turn will help you direct your client appropriately. The best approach is to have the client consult with local counsel in Puerto Rico for matters in which Puerto Rico law will be applied. However, although it may seem more expensive to the client, many times it is better for the New Jersey practitioner to remain involved and coordinate strategy and legal planning with counsel in Puerto Rico in order to develop a consistent and workable plan for the client. Remember that although Puerto Rico is not quite a state, the state and federal courts in the mainland will give full faith and credit to Puerto Rico laws, statutes and judgments, as if it were another state, and *vice versa*. Also, a U.S. state or federal court will not hesitate to apply choice of law rules and apply Puerto Rico law where necessary. Therefore, if you are handling issues and client situations in both jurisdictions, it is advisable that you become knowledgeable on how Puerto Rico law may be applied—whether by a Puerto Rican court, or by a federal or state court. Just because the client needs assistance with legal issues in Puerto Rico, this does not mean that legal strategy and decisions made in New Jersey will not be affected by such issues or *vice versa*.

Our panel of distinguished Puerto Rico attorneys, all of whom have had dual jurisdiction clients and have faced these issues will discuss how Puerto Rico’s civil law system would affect two hypothetical client scenarios with probate, real estate and family law implications. While New Jersey law may be discussed in passing, the organizers of this seminar assume that you are already acquainted with these three areas of New Jersey law. Our goal is to acquaint you with **Puerto Rico law**, and the way that such law impacts these critical areas.

For your convenience, and for future reference, we have attached to this pamphlet excerpts relevant to this seminar of the 2005 Martindale’s Law Digest for both New Jersey and Puerto Rico: both of which constitute excellent summaries of the law of both jurisdictions. We hope you enjoy the seminar and that you continue supporting the work of the New Jersey Hispanic Bar Association.

Daniel R. Guadalupe, Esq.



## Client Scenario No. 1

### The Case of Don Julio

Don Julio is born and raised in Puerto Rico until age 21 when he moves to New Jersey, where he establishes his permanent home.



Don Julio then marries and starts and grows "DON JULIO INDUSTRIES" over the next 40 years.



He becomes a wealthy businessman and acquires significant personal and real property both in New Jersey and in Puerto Rico.



He travels back and forth between both places, taking care of his business and properties in both locations.



He has 4 children: 2 living in Puerto Rico and 2 living in New Jersey.





Don Julio dies  
but he fails to leave any Will in any of the two jurisdictions...

Or, alternatively:

- A) He has a New Jersey Will  
and no Puerto Rico Will.



or

- B) He has a New Jersey Will AND a  
Puerto Rico Will.



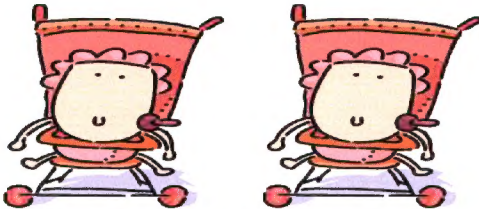
## Client Scenario No. 2

### Don Julio Complicates His Life



Don Julio is born and raised in New Jersey until age 21 when he moves to Puerto Rico.

He marries a woman in Puerto Rico and has 2 children.



His business goes well, and he acquires real and personal property in Puerto Rico, as his family life prospers.

Because of increased mainland business, Don Julio has to open operations in Elizabeth to be close to a major port. At age 45, Don Julio decides he must live by himself 6 months in New Jersey and 6 months in Puerto Rico. These living arrangements

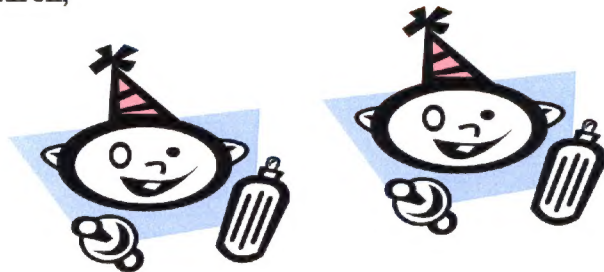


and his business take a toll on his marriage, and at age 50 he divorces his wife, who stays in Puerto Rico with the two children. He retains significant assets and real property in both jurisdictions.

Don Julio subsequently remarries in New Jersey...



and has two more children,  
born in New Jersey.



He dies when he is 65, leaving no Will in either jurisdiction.



legally (but secretly) recognized by Don Julio  
as his daughter.

He is buried in Puerto Rico, and at  
his funeral there--surprise: a woman  
claims that Don Julio had a child with  
her (both domiciled in Puerto Rico)  
who was





Don Julio leaves  
significant assets in both  
jurisdictions...



...and the race between former and current spouses, heirs, and  
creditors begins...

